

Opinions for the week of March 29 – April 2, 2021

USA v. Steven Link No. 20-2103

Submitted March 26, 2021 — Decided March 29, 2021

Case Type: Criminal

Eastern District of Wisconsin. No. 14-CR-223 — **William C. Griesbach**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

Steven Link, a federal inmate, moved for compassionate release in two separate motions, first, so that he could reestablish his relationship with his child in foster care and, later, so that he could avoid the threat of COVID-19 that was afflicting many prisoners. See 18 U.S.C. §3582(c)(1)(A). The district court denied both motions, concluding that he had not shown sufficiently compelling reasons to justify release. Because the court did not abuse its discretion in denying the motions, we affirm.

USA v. Steven Smith No. 20-1950

Submitted March 26, 2021 — Decided March 29, 2021

Case Type: Criminal

Northern District of Indiana, Fort Wayne Division. No. 1:15CR13-001 — **Holly A. Brady**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

Steven Smith pleaded guilty to attempting to distribute one kilogram or more of heroin in violation of 21 U.S.C. §846. Although his plea agreement contained a broad appellate waiver, he appeals his sentence on the ground that the district court wrongly classified him as a career offender. Because Smith agreed to this waiver knowingly and voluntarily, we dismiss his appeal.

Robert Decker v. Merrick B. Garland No. 20-1890

Submitted March 24, 2021 — Decided March 29, 2021

Case Type: Prisoner

Southern District of Illinois. No. 19-cv-00233-JPG — **J. Phil Gilbert**, *Judge*.

Before MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*; THOMAS L. KIRSCH II, *Circuit Judge*.

ORDER

Robert Decker, a federal prisoner, appeals from the district court's dismissal of his complaint at screening. See 28 U.S.C. § 1915A. Decker filed suit in the district court raising claims that the Bureau of Prisons and prison officials violated the Administrative Procedure Act and his rights under the First, Fifth, and Fourteenth Amendments by: (1) not providing him access to the Bureau of Prison's proposed rule changes, thereby depriving him of the chance to engage in public comment on the Bureau's proposed rulemaking; and (2) not providing access to the Federal Register, which deprived him of the opportunity to engage in public comment on proposed rulemaking by other agencies. At screening, the district court concluded that Decker's Administrative Procedure Act claim failed because the Bureau of Prisons had no duty to give notice of rule changes proposed by other agencies and it provided a chance for comment on its own proposed changes... With respect to Decker's claim that lack of access to the Federal Register violated his rights to freedom of speech and due process, the district court concluded he had no claim because he had access to the same information in "other forms," relying on an unpublished case from this circuit... The district court dismissed Decker's complaint with prejudice and assessed a strike under the Prison Litigation Reform Act. 28 U.S.C. § 1915(g)... the district court's order and judgment dismissing the case are VACATED and this case is REMANDED to the district court for further proceedings consistent with this order.

Todd Cibulka v. City of Madison No. 20-1658

Argued February 24, 2021 — Decided March 29, 2021

Case Type: Civil

Western District of Wisconsin. No. 18-cv-537 — **James D. Peterson**, *Chief Judge*.

Before FLAUM, MANION, and KANNE, *Circuit Judges*.

KANNE, *Circuit Judge*. Todd and Shelly Cibulka drove to the University of Wisconsin–Madison to visit their daughter Emily and enjoy festivities after a Badgers football game. But the good times took a bad turn. Todd and Shelly spent several post-game hours heavily drinking at a bar; upon locating them, Emily ultimately called the police; and Todd ended up in the county jail. Todd and Shelly then sued the police officers for false arrest and excessive force. The district court granted summary judgment in favor of the officers on qualified immunity grounds. We agree that the officers are entitled to qualified immunity and therefore affirm the district court.

Ricardo Pittman v. Viamonte Investments Group LLC No. 20-1107

Submitted March 26, 2021 — Decided March 29, 2021

Case Type: Civil

Northern District of Illinois, Eastern Division. No 19 C 4732. — **Harry D. Leinenweber**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

Ricardo Pittman, a recipient of housing assistance, was evicted from his apartment for failing to pay rent after enduring a year of bad conditions and the cut-off of his gas line. He sued several defendants including his private landlord, the gas company, and the Housing Authority of Cook County, alleging that they conspired to violate his rights under federal and state law. The defendants moved to dismiss the complaint on a variety of grounds. The district court determined either that it lacked jurisdiction over any such claims or that Pittman failed to state claims under federal law. It declined to exercise supplemental jurisdiction over the state-law claims and dismissed the complaint with prejudice. We affirm.

Omar Grayson v. Jody Goetting No. 19-2199

Submitted March 26, 2021 — Decided March 29, 2021

Case Type: Prisoner

Southern District of Illinois. No. 3:15-CV-981-RJD — **Reona J. Daly**, *Magistrate Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

Omar Grayson, formerly an inmate at Pinckneyville Correctional Center in Illinois, sued an assistant warden, Jody Goetting, for requiring him to untie his dreadlocks for an intake photo. A jury found that this requirement did not violate Grayson's free-exercise rights under the First Amendment. On appeal, Grayson primarily argues that the verdict was against the weight of the evidence. But because the jury had ample evidence from which it could find for Goetting, we affirm.

Edgar Magana Ayala v. Merrick B. Garland No. 20-2792

Argued March 2, 2021 — Decided March 30, 2021

Case Type: Agency

Board of Immigration Appeals. No. A058-223-748

Before KENNETH F. RIPPLE, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; THOMAS L. KIRSCH II, *Circuit Judge*.

ORDER

Petitioner Edgar Magana Ayala is a Mexican citizen who was a legal permanent resident in the United States before he committed a drug crime and was removed to Mexico, where he sold drugs for a cartel. He returned illegally and was later placed in removal proceedings. Magana applied for deferral of removal under the Convention Against Torture asserting that he fears he will be killed by cartels if he is removed again to Mexico. An immigration judge denied relief, finding that Magana had not proven he faced a substantial risk of torture. The Board of Immigration Appeals upheld that determination. Magana petitions for review of the denial of his application. Because the agency's decision is supported by substantial evidence, we deny his petition.

Jason Jeffers v. CIR No. 20-2056

Argued February 10, 2021 — Decided March 30, 2021

Case Type: Tax

United States Tax Court. No. 9791-18 L — **Elizabeth Crewson Paris**, *Judge*.

Before MANION, KANNE, and ROVNER, *Circuit Judges*.

MANION, *Circuit Judge*. Jason Jeffers owes several thousand dollars in federal taxes. He has incessantly challenged his tax liability at every turn—except the one operative point in time: after receiving notice of a federal tax lien on his property. The IRS seeks to levy on Jeffers's property in satisfaction of his debt. Instead of contesting the propriety of the levy or offering collection alternatives, he asks this Court to find he is owed tax refunds. Jeffers covertly disguises several arguments related to his underlying tax liability, attempting to breach our jurisdictional boundaries through the use of collection and levy language. We restrict our review to issues properly before the Court. Because Jeffers had a prior opportunity to contest his underlying tax liability, we affirm.

NLRB v. Constellation Brands U.S. Operations Nos. 19-1321 & 19-1549

Argued January 13, 2021 — Decided March 30, 2021

Case Type: Agency

National Labor Relations Board. Nos. 32-CA-186238, 32-CA-186265

Before FLAUM, BRENNAN, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. In early 2017 a union alleged that Woodbridge Winery violated the National Labor Relations Act by directing an employee to remove pro-union clothing and maintaining a policy that limited bonus eligibility to non-union employees. An administrative law judge and the National Labor Relations Board agreed that Woodbridge engaged in unfair labor practices. Because the Board's decision is supported by substantial evidence, we deny Woodbridge's petition for review and enforce the Board's order.

EEOC v. Walmart Stores East, L.P. No. 20-1419

Argued December 2, 2020 — Decided March 31, 2021

Case Type: Civil

Western District of Wisconsin. No. 18-cv-804-bbc — **Barbara B. Crabb**, *Judge*.

Before EASTERBROOK, RIPPLE, and ROVNER, *Circuit Judges*.

ROVNER, *Circuit Judge*, dissenting.

EASTERBROOK, *Circuit Judge*... In April 2016 Walmart offered Edward Hedican a job as one of eight full-time assistant managers. After receiving the offer, Hedican revealed that, as a Seventh-day Adventist, he cannot work between sundown Friday and sundown Saturday. That disclosure led to a reevaluation of the offer and to this suit under Title VII of the Civil Rights Act of 1964. Lori Ahern, the store's human resources manager, assessed whether Walmart could accommodate Hedican's religious practices. She concluded that doing so would require assigning the other seven assistant managers to additional Friday night and Saturday shifts, even though they prefer to have weekends off... Ahern concluded that accommodating Hedican would leave the store short-handed at some times, or would require it to hire a

ninth assistant manager, or would compel the other seven assistant managers to cover extra weekend shifts despite their preference to have weekends off. She therefore raised with Hedican the possibility that he apply for an hourly management position, which would not be subject to the rotation schedule for the eight assistant managers. Hedican did not do so. Instead he filed a charge with the Equal Employment Opportunity Commission, which decided to prosecute a failure-to-accommodate suit on its own behalf... On motion for summary judgment, the district judge sided with Walmart... The judge thought that an hourly management job would have been a reasonable accommodation, even though the entry-level pay of that position is lower than the entry-level pay of an assistant manager. And the judge believed that interference with the store's rotation system would exceed a slight burden... Because accommodating Hedican's religious practices would require Walmart to bear more than a slight burden (if he became one of the eight assistant managers), and because Title VII does not place the burden of accommodation on fellow workers, the district court's judgment is **AFFIRMED**.

Jason Perry v. Richard Brown No. 20-1005

Submitted February 5, 2021 — Decided March 31, 2021

Case Type: Prisoner

Southern District of Indiana, Indianapolis Division. No. 1:18-cv-04054-TWP-DML — **Tanya Walton Pratt**, *Chief Judge*.

Before DIANE P. WOOD, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Indiana prisoner Jason Perry petitioned for a writ of habeas corpus under 42 U.S.C. § 2254 after a hearing officer found him guilty of throwing urine on a prison guard, for which he lost 180 days of earned good-time credit and certain privileges. Perry claimed that he was deprived of due process at the disciplinary hearing because, among other reasons, he went before a biased decisionmaker and never had access to key evidence. The district court denied his petition, and because Perry fails to show his rights were violated, we affirm.

Latrice Saxon v. Southwest Airlines Company No. 19-3226

Argued March 3, 2021 — Decided March 31, 2021

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 19-cv-0403 — **Robert M. Dow, Jr.**, *Judge*.

Before MANION, WOOD, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*...Latrice Saxon is a ramp supervisor who manages and assists workers loading and unloading airplane cargo for Southwest Airlines Company. After she brought a lawsuit against her employer, Southwest invoked the Arbitration Act. Saxon asserted that she was an exempt transportation worker, but the district court found her work too removed from interstate commerce and dismissed the case... Because we conclude that airplane cargo loaders are a class of workers engaged in commerce and Saxon is a member of that class, it follows that she is a transportation worker whose contract of employment is exempt from the Federal Arbitration Act. We therefore reverse the district court's judgment compelling arbitration and remand for further proceedings.

Wisconsin Central LTD v. Soo Line Railroad Company No. 19-3129

Argued September 25, 2020 — Decided March 31, 2021

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:16-cv-04271 — **Andrea R. Wood**, *Judge*.

Before RIPPLE, BRENNAN, and ST. EVE, *Circuit Judges*.

BRENNAN, *Circuit Judge*. Decades ago, railroad company Wisconsin Central, Ltd. entered into an agreement that included the purchase of rail lines from Soo Line Railroad Company. Part of that agreement allocated responsibility for future environmental liabilities. Years later, contamination was

discovered near one of those lines in Ashland, Wisconsin on the shore of Lake Superior. The railroads jointly defended and settled responsibility for the investigation and remediation of that site. Then they each sought indemnification from the other. The district court awarded summary judgment to Soo Line for damages, attorneys' fees, and costs. On appeal, the railroads dispute when a claim was first asserted, and how much of the cost of defending and settling the matter was related to the rail lines and their operation. Indemnification under the agreement turns on both issues...Giving full effect to the railroads' Agreement, including the indemnification clause, results in Wisconsin Central bearing these environmental costs in their entirety. For the reasons relayed above, we AFFIRM the district court's grant of summary judgment to Soo Line.

Countryside Bank v. Zafar Sheikh No. 19-2655

Submitted March 26, 2021 — Decided March 31, 2021

Case Type: Civil

Northern District of Indiana, Hammond Division. No. 2:18-cv-132 — **Theresa L. Springmann**, *Judge*. Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

After Countryside Bank named Zafar Sheikh among other defendants in a mortgage-foreclosure suit, Sheikh removed the case from state to federal court. Sheikh argued that the case involved a federal question. The district court disagreed, remanded the case to state court, and awarded fees to Countryside for its expenses in litigating removal. Sheikh now contests the fee award, but because the district court did not abuse its discretion in imposing those fees, we affirm.

USA v. Marvin Jones & Angela Wansley Nos. 19-2176 & 19-2177

Argued October 2, 2020 — Decided March 31, 2021

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 16-cr-00588 — **Robert W. Gettleman**, *Judge*. Before RIPPLE, KANNE, and HAMILTON, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Defendants Marvin Jones and Angela Wansley both worked for the United States Postal Service. Over a few months in 2016, they participated in a conspiracy to ship marijuana from California to Illinois through the United States Mail. Mr. Jones provided coconspirators with addresses in his postal area. The coconspirators then mailed the illicit packages to those addresses. Mr. Jones and Ms. Wansley, using their roles in the Postal Service, intercepted the packages and handed them off to other members of the conspiracy. For their part in the operation, both Mr. Jones and Ms. Wansley took cash bribes. The scheme ended when federal officers arrested Mr. Jones, Ms. Wansley, and several of their coconspirators. The Government tried Mr. Jones and Ms. Wansley together, and a jury convicted them of conspiracy, bribery, and obstruction of correspondence. They now contend that the Government presented evidence insufficient to sustain their convictions. After a full review of the trial record, we cannot accept this submission and therefore affirm their convictions on all counts.

Chadd Morris v. Gregg Scott No. 20-2217

Submitted March 12, 2021 — Decided March 12, 2021 — Amended April 1, 2021

Case Type: Civil

Central District of Illinois. No. 4:20-cv-04092-JES — **James E. Shadid**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

AMENDED ORDER

Chadd Morris, a civil detainee at a state facility, sued several of the facility's staff members for confiscating audio cassette tapes in violation of the First and Fourteenth Amendments. The district court dismissed the case at screening, correctly concluding that Morris's complaint failed to state a due-process

claim under the Fourteenth Amendment. But because the court overlooked Morris's allegations of a First Amendment retaliation claim against two of the defendants, we vacate the judgment in part, affirm in part, and remand for further proceedings.

Chadd Morris v. Gregg Scott No. 20-2217

April 1, 2021

Case Type: Civil

Central District of Illinois. No. 4:20-cv-04092-JES — **James E. Shadid**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

Pro se Appellant, Chadd A. Morris, filed a petition for rehearing on March 25, 2021. All of the judges on the panel have voted to deny rehearing and to issue an amended order. This court's order dated March 12, 2021, is amended in a separately filed order released today. The petition for rehearing is therefore DENIED.